

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JANICE M. LAWRENCE,

Plaintiff,

v.

AVAYA INC.,

Defendant.

CIVIL ACTION NO. 03-12610-WGY

EMERGENCY MOTION FOR RECONSIDERATION

Defendant Avaya Inc. ("Avaya") respectfully submits this Emergency Motion for Reconsideration of the Court's January 5, 2005 Order denying the parties' Second Joint Motion to Extend Scheduling Order Deadlines (the "Joint Motion to Extend"). In support of this Motion, Avaya states as follows:

1. The Complaint was filed on December 29, 2004; Avaya agreed to waive service of summons on March 11, 2004.
2. On December 9, 2004, the Court granted the parties' Joint Motion for Order of Reference to Mediation before Magistrate Judge Swartwood.
3. Working with Judge Swartwood's clerk, the parties were assigned a mediation date of January 20, 2005. This was 15 days after the summary judgment deadline of January 5, 2005.
4. The parties therefore promptly filed the Joint Motion to Extend, advising the Court of the above mediation date and seeking leave to extend the summary judgment deadline.
5. On January 5, 2005, the Court denied the Joint Motion to Extend.
6. Avaya respectfully prays this Court to reconsider this ruling, on the following grounds:

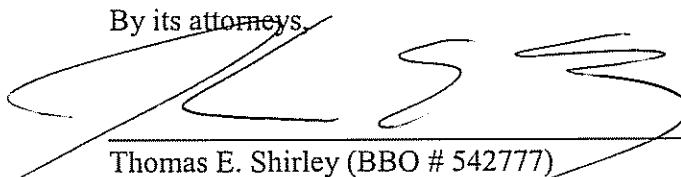
- a. A critical inducement to mediation has been the possible savings of not having to prepare and argue a dispositive motion for summary judgment.
- b. Major prejudice to Avaya will result if it is unable to pursue such a motion promptly in the event that the mediation is unsuccessful.
- c. The case is not old. Avaya waived service less than nine months ago. The parties thereafter diligently pursued discovery and have concluded in good faith that mediation may provide a forum for resolution of the matter.
- d. Avaya is prepared to file a motion for summary judgment by no later than January 27, 2005, one week after the January 20, 2005 mediation date, in the event the mediation is unsuccessful.

WHEREFORE, Avaya respectfully prays that the Court reconsider its denial of the Joint Motion to Extend and permit Avaya to file a motion for summary judgment by no later than January 27, 2005 in the event that the January 20, 2005 mediation before Judge Swartwood is unsuccessful.

Respectfully submitted,

AVAYA INC.

By its attorneys,



Thomas E. Shirley (BBO # 542777)

Lisa M. Gaulin (BBO # 654655)

CHOATE, HALL & STEWART

Exchange Place

53 State Street

Boston, MA 02109

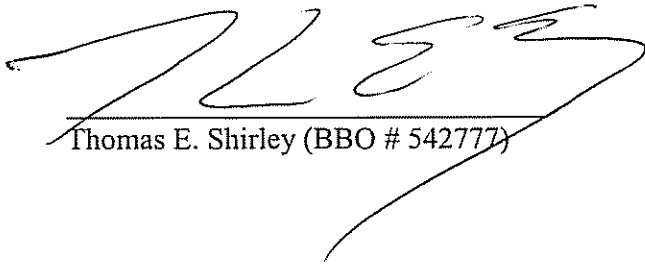
(617) 248-5000

Dated: January 5, 2005

I HEREBY CERTIFY THAT A TRUE COPY OF
THE ABOVE DOCUMENT WAS SERVED
UPON THE ATTORNEY OF RECORD FOR
EACH OTHER PARTY BY MAIL/HAND ON
DATE 1/5/05 SIGNATURE TL

RULE 7.1 CERTIFICATION

Thomas E. Shirley, counsel for Avaya, hereby certifies that he exchanged telephone messages with counsel for Plaintiff, who has stated that he does not oppose this Emergency Motion.



Thomas E. Shirley (BBO # 542777)